



- monthly \$82 premium. The notice told them that they needed to report to the county if income in a month rose above \$2,441.25.
3. Notices sent in May and July also told petitioner to report if income rose above \$2,441.25. Those notices continued to say that the household was eligible for BC+, and the couple continued to pay the monthly premiums.
  4. Household income rose above \$2,441.25 already in February, 2013. It stayed above that amount for the rest of 2013.
  5. After the county discovered the higher income the case was referred for an overpayment. The county determined that the premium in April, 2013 would have been higher, and then the adults would not have been eligible for BC+ thereafter because income consistently was higher than \$3,255. The overpayment specialist reviewed MA payments on their couple's behalf.
  6. By a notice dated June 1, 2016, the county informed petitioner that she was overpaid \$597.79 from April 1 through December 31, 2013, claim no. [REDACTED]. Her husband received a separate notice with a different overpayment amount based upon MA payments made on his behalf.

### **DISCUSSION**

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The BC+ Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income. If the case was ineligible for BC+, the agency should recover the amount of medical claims paid by the state and/or the capitation rate, with any amount paid in premiums deducted from the overpayment amount.

Under BC+ rules in 213 the income limit for caretaker parents was 200% of the poverty level. BC+ Handbook, Appendix 16.1. That amount for a three-person household is \$3,255. Handbook, App. 50.1.

If income was between 100% and 200% the adults could be eligible with a premium. 100% in 2013 was \$1,627.50.

When the agency originally determined BC+ eligibility it used the most recent paystubs, and income was low enough in those pay checks to make the couple eligible. However, income rose almost immediately, and there simply is no record that either petitioner or her husband contacted the agency to report the higher income or the receipt of insurance through work.

Petitioner's husband testified that when he obtained his new job he contacted the agency, and was told the couple was eligible for BC+. However, he started the job in September, 2012, which was before the events in this case. He started to receive health insurance through his employer in April, 2013, and had that been reported BC+ would have ended, but again, there is no record of a report, and BC+ remained open until the end of 2013, with MA paying monthly HMO capitation fees.

An overpayment must be recovered unless it occurred due to agency error. I can find no agency error here. Clearly there was confusion, and perhaps assumptions made by the couple concerning the agency's knowledge of their employment circumstances, but this appears to be a classic example of an overpayment caused by client error (as opposed to client fraud, in which the failure to report is intentional).

I conclude that the agency correctly determined the overpayment.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid MA because she did not report an increase in income, leading to the her receiving eight months of BC+ to which she was not eligible.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 17th day of August, 2016

\s\_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on August 17, 2016.

Brown County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability